

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVOOD KHADEMI,  
Petitioner,  
v.  
UNKNOWN,  
Respondent.

No. 2:25-cv-1257 CSK P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a former county prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

Petitioner names his defense counsel, Paul Comiskey, as respondent. The proper respondent to a habeas corpus petition is the person who has custody of petitioner. See 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”). Therefore, Paul Comiskey is not the proper respondent. At the time petitioner filed this action, petitioner was incarcerated in the Placer County Jail. On May 28, 2025, petitioner filed a notice of change of address suggesting that petitioner is no longer incarcerated in the Placer County Jail. (ECF No. 5.) Because this Court cannot determine who

1 has custody of petitioner at this time, this Court directs the Clerk of the Court to amend the  
2 caption of this action to identify the respondent as “unknown.”

3 The exhaustion of state court remedies is a prerequisite to the granting of a petition for  
4 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived  
5 explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3).<sup>1</sup> A waiver of exhaustion, thus, may  
6 not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the  
7 highest state court with a full and fair opportunity to consider all claims before presenting them to  
8 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d  
9 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

10 After reviewing the petition for habeas corpus, the Court finds that petitioner has failed to  
11 exhaust state court remedies. The claims have not been presented to the California Supreme  
12 Court. Further, there is no allegation that state court remedies are no longer available to  
13 petitioner. Accordingly, the petition should be dismissed without prejudice.<sup>2</sup>

14 Good cause appearing, IT IS HEREBY ORDERED that:

- 15 1. Petitioner motion to proceed in forma pauperis (ECF No. 2) is granted;
- 16 2. The Clerk of the Court is directed to amend the caption of this action to identify the  
17 respondent as “unknown”;
- 18 3. The Clerk of the Court is directed to assign a district judge to this action; and

19 IT IS HEREBY RECOMMENDED that petitioner’s application for a writ of habeas  
20 corpus be dismissed for failure to exhaust state remedies.

21 These findings and recommendations will be submitted to the United States District Judge  
22 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
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24 <sup>1</sup> A petition may be denied on the merits without exhaustion of state court remedies.  
25 28 U.S.C. § 2254(b)(2).

26 <sup>2</sup> Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations  
27 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period  
28 will start to run on the date on which the state court judgment became final by the conclusion of  
direct review or the expiration of time for seeking direct review, although the statute of  
limitations is tolled while a properly filed application for state post-conviction or other collateral  
review is pending. 28 U.S.C. § 2244(d).

1 after being served with these findings and recommendations, petitioner may file written  
2 objections with the court. The document should be captioned “Objections to Findings and  
3 Recommendations.” In his objections petitioner may address whether a certificate of  
4 appealability should issue in the event he files an appeal of the judgment in this case. See Rule  
5 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a  
6 certificate of appealability when it enters a final order adverse to the applicant). A certificate of  
7 appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial  
8 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). Petitioner is advised that  
9 failure to file objections within the specified time may waive the right to appeal the District  
10 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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12 Dated: May 30, 2025

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14 CHI SOO KIM  
15 UNITED STATES MAGISTRATE JUDGE  
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